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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MOSHE M. MATSA, JULIUS Q. QUIAOT, and
CHRISTOPHER R. VINCENT

Appeal 2008-003101
Application 09/866,410¹
Technology Center 2400

Decided: August 24, 2009

Before JOHN C. MARTIN, JAY P. LUCAS, and CAROLYN D. THOMAS,
Administrative Patent Judges.

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Application filed May 25, 2001. The real party in interest is International Business Machines Corporation.

STATEMENT OF THE CASE

Appellants appeal from a final rejection of claims 1-11, 16-26, 31, 33-43 and 48-51 under authority of 35 U.S.C. § 134. All of the remaining claims are canceled. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention relates to a method and system for routing Instant Messages (IMs) using various protocols and devices as the situation may require. In the words of Appellants:

[0003] Although instant messaging is a common practice, frequently there are situations in which the message does not reach the intended recipient. For example, the messaging protocol is down or the intended recipient does not have access to the protocol sending the message (e.g., no computer access).

[0005] The shortcomings of the prior art are overcome and additional advantages are provided through the provision of a method of routing instant messages. The method includes, for instance, defining, at runtime by a pluggable delivery manager, a delivery policy to be used to route an instant message to an intended recipient of the instant message, wherein the delivery policy is based upon a configuration of the pluggable delivery manager, a user configuration of the intended recipient, and one or more available delivery mechanisms; and routing the instant message to the intended recipient using the delivery policy.

[0009] In an aspect of the present invention, an instant message delivery environment is provided, which integrates multiple protocols and notification services to provide a more robust, intelligent technique of synchronous communication.

(Spec. ¶¶ [0003], [0005], and [0009]).

Claim 1 is exemplary:

1. A method of routing instant messages, said method comprising:

defining, at runtime by a pluggable delivery manager, a delivery policy to be used to route an instant message to an intended recipient of the instant message, wherein the delivery policy is based upon a configuration of the pluggable delivery manager, a user configuration of the intended recipient, and one or more available delivery mechanisms;
and

routing said instant message to the intended recipient using said delivery policy.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

| | | |
|------------|-----------------|---------------|
| Thro | US 6,147,977 | Nov. 14, 2000 |
| Somashekar | US 2002/0116477 | Aug. 22, 2002 |

REJECTION

The Examiner rejects the claims as follows:

R1: Claims 1-11, 16-26, 31, 33-43 and 48²-51 stand rejected under 35 U.S.C. § 103(a) for being obvious over Thro in view of Somashekar.

Groups of Claims:

Claims will be addressed in the order of the arguments, with claim 1 representative. *See* 37 C.F.R. § 41.37 (c) (vii).

² Claim 49 is indicated to be dependent on claim 1. We assume from the content and context that the claim was intended to be dependent on claim 16.

Appellants contend that the claimed subject matter is not rendered obvious by Thro in combination with Somashekar for failure of the references to teach claimed limitations. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments that Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived.

We affirm the rejection.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether Thro and Somashekar teach a pluggable delivery manager and delivery policy to route instant messages to the recipient in a manner specified by the configurations of the senders and recipients.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellants have invented a method and system for routing IMs through disparate systems that have various protocols and different delivery mechanisms. (Spec. 6, ¶ [0021]). The method uses a delivery manager, which is a software program that is configured and added to the logic in

the sender's computer at runtime. (Spec. 7, ¶¶ [0023], [0024]). For each message, the delivery manager is configured to conform to the constraints of the sending computing unit and also the intended receiver's preferred configuration. (Spec. 9-10, ¶¶ [0030]-[0032]). The delivery solution for a particular message that conforms to both the sender's and receiver's acceptable configurations is called the delivery policy. (Spec. 12, ¶ [0041]).

2. Thro teaches sending wireless messages with the originating and receiving parties have independent protocols, content and equipment. (Col 2, ll. 48-58). The system takes into account the originating party's priorities and rules and merges them with the receiving party's priorities and rules, so that a jointly acceptable mode of communications is achieved. (Col. 3, l. 64 to col. 4, l. 13). Different equipment is factored into the solution. (Col. 3, l. 55).
3. Somashekar teaches distribution of programs and services between equipment on large networks, using embedded pluggable components placed in the equipment at both ends. (¶¶ [0007] and [0011]). These pluggable components manage the distribution of the information across the network and are activated and configured at runtime. (¶¶ [0015], [0016]).

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86

(Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

“In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

From our review of the administrative record, we find that the Examiner has stated the reasons in support of the prima facie case for the rejections of Appellants’ claims under 35 U.S.C. § 103(a) on pages 4 to 11 of the Examiner’s Answer. In opposition, Appellants present a number of arguments.

*Arguments with respect to the rejection
of claims 1 to 11, 16 to 26, 31, 33 to 43 and 48 to 51
under 35 U.S.C. § 103(a) [R1]*

Appellants first contend that the Examiner erred in this rejection because both Thro and Somashekar fail to “describe, teach or suggest using a pluggable delivery manager in routing instant messages.” (Brief 7, middle). Thro teaches the delivery manager creating a delivery policy based on the configurations of the manager itself in the originating device and the configuration of the recipient device. (*See* FF#2 above). Somashekar teaches that a pluggable module can be placed in both the originating and

recipient devices to manage the distribution of information across a network. (See FF#3 above.) We find that the combination of these references clearly teaches and suggests the pluggable delivery manager as claimed. (Ans. 11, middle).

Appellants next contend that the references do not teach a delivery policy to be used to route an IM to an intended recipient. (Brief 7, bottom). In this context, the delivery policy is the solution that comes from satisfying the constraints of the sending and receiving equipment's configurations, protocols and requirements. (Spec. 11, ¶ [0039]). Thro clearly teaches that messages are transmitted across the wireless system based on the priorities of both the originating and receiving party. (Col. 4, ll. 9-12). We thus do not find error in the rejection in this regard.

Appellants next argue that Somashekar fails to teach "defining, at runtime by a pluggable delivery manager, a delivery policy to be used to route an instant message to an intended recipient." (Brief 8, top). We find that Somashekar, in combination with Thro, teach the runtime created delivery manager as claimed. Note in Thro the different types of messages that are sent across the network, including data messages. (Col. 1, ll. 35-40). Note in Somashekar the pluggable modules managing the data. (FF#3). Appellants have not shown error in the rejection in this argument.

With regard to claims 8, 23, and 40, Appellants argue that there is no "description, teaching or suggestion in Thro or Somashekar of, for instance, configuring the pluggable delivery manager by selecting the configuration from a set of one or more configurations, wherein the selecting uses content of the instant message to make the selection." (Brief 10, middle). We disagree, and find the needed teachings in the references as particularly

pointed out by the Examiner in the Answer, page 14, section (e). We only add that the reference also clearly states that the message itself contains configuration information upon which the user can base the decision. (*See* Thro, col. 2, ll. 53-60.) In view of these teachings, we decline to find error in the Examiner's rejection.

Appellants' arguments concerning claims 9, 24, 41, and 48-51 are similar to the ones discussed above and are not found to be indicative of Examiner error. (Brief 11-12).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-11, 16-26, 31, 33-43, and 48-51 under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 1-11, 16-26, 31, 33-43, and 48-51 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

peb

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